

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-10480-RGS

SILAS CALHOUN AND EMILY)
CALHOUN, INDIVIDUALLY, AND AS)
PARENTS AND NEXT FRIENDS OF)
ESTELLA CALHOUN,)
)
Plaintiffs,)
)
v.)
)
UNITED STATES OF AMERICA,)
ERIC C. DAUB, M.D. AND)
MARIANNE SUTTON, M.D.,)
)
Defendants.)

**MOTION FOR RECONSIDERATION OF THE MOTION OF DEFENDANT,
MARIANNE SUTTON, M.D., TO COMPEL PLAINTIFFS' DEPOSITIONS IN
MASSACHUSETTS**

NOW COMES the defendant, Marianne Sutton, M.D. ("Dr. Sutton"), and hereby moves this Honorable Court for reconsideration of the Court's finding on Dr. Sutton's Motion to Compel the plaintiffs' depositions in Massachusetts. Dr. Sutton requests this Honorable Court Order the plaintiffs' to pay for all or part of the defense costs associated with either taking the plaintiffs' depositions in Hawaii or by audiovisual means, since they are unwilling to travel to Massachusetts.

Dr. Sutton refers the Court to her Motion to Compel for a statement of the facts and procedural history of the case.

ARGUMENT

Dr. Sutton requests this Court modify its Order that the plaintiffs' depositions be taken, by video deposition, to include that the plaintiffs should bear all or part of the

defense costs for taking the plaintiffs depositions in Hawaii, as opposed to where suit was filed. The defendant estimates the total cost of taking the video depositions of the plaintiffs would be approximately \$4,500 to \$6,000 (including room costs in Massachusetts and Hawaii, phone line charges, videographer fees, and overtime pay to the court reporter – due to the seven hour time difference). The costs for taking the plaintiffs’ depositions in Hawaii would be approximately \$5,000 (including air, hotel, travel time and miscellaneous expenses).¹ A trial court has considerable latitude in managing pretrial matters, including allocating hotel and airfare costs for depositions to the opposing party. See Navarro de Cosme v. Hospital Pavia, 922 F.2d 926 (1st Cir. 1991)(depositions requiring travel between Puerto Rico and New York). “Having each party pay for adversaries’ expenses in connection with the taking of depositions is a common practice where circumstances warrant.” Id.

The circumstances in this case warrant plaintiffs’ payment of defendant counsel’s costs because the plaintiffs lost at the medical malpractice tribunal hearing. The plaintiffs failed to proffer sufficient evidence to satisfy the directed verdict standard applied at the hearing, where the majority of plaintiffs’ usually prevail. It is mere speculation by plaintiffs’ counsel as to why the Tribunal ruled in favor of Dr. Sutton. Dr. Sutton has a very strong defense in this matter and intends to proceed to trial of the matter because of that strong defense.

The plaintiffs had to post a \$6,000.00 tribunal bond for the case to proceed. Generally, if the defendant prevails at trial such bond is not sufficient to cover the costs of defending a medical malpractice action, even when there are no out-of-state

¹ Due to the costs being relatively the same between video deposition and an in person deposition in Hawaii, defendants are considering both options.

depositions to attend. Accordingly, Dr. Sutton should not have to bear the additional costs associated with taking the plaintiffs' depositions in Hawaii, either by video or in person.

CONCLUSION

WHEREFORE, the defendant, Dr. Sutton, respectfully requests that this Honorable Court Order that plaintiffs pay for all or part of the defense costs associated with taking the plaintiffs' depositions in Hawaii or by audiovisual means.

The Defendant,
Marianne Sutton, M.D.
By her attorneys,

/s/Holly L. Parks
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/s/ Holly L. Parks, BBO No. 647273
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DATED: